

Customer No. 24498
Attorney Docket No. PD030110
Final Office Action Date: March 19, 2010

Remarks

Claims 11, 14, 16 – 23 are pending. Claims 21 – 23 are new claims. Claims 11, 16, and 20 have been amended to more clearly and distinctly claim the subject matter that Applicants regard as their invention. Support for the new and amended claims can be found at least in Fig. 2 and in the specification at paragraph [0020]. No new matter is believed to be added by the present amendment.

Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted "prior art" and U.S. Patent No. 7,227,824 to Kuroda ("Kuroda") in view of U.S. Patent No. 6,976,252 to Meyerson ("Meyerson").

Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted "prior art," Kuroda, and Meyerson. Applicants respectfully traverse this rejection for at least the following reasons.

Kuroda does not disclose or suggest certain features of amended claim 1

Kuroda uses a correction data table to store corrected data. Correction is only necessary when certain parameters (e.g., the company name, product ID No., and corrected data) contained in the correction data table matches the parameters of the playing program version stored in the disc player. Otherwise, there is no need to apply the corrected data to the playing program. By contrast, amended claim 11 recites storing the firmware update data in the root directory of a computer readable medium, in a sub-branch of a single dedicated directory that is named according to the playback device manufacturer. Clearly, Kuroda differs from amended claim 11. As such, Kuroda does not teach or suggest the feature of the *"firmware update data being structured into a plurality of files in one or more sub-branches of a single dedicated directory, each sub-branch named according to a playback device manufacturer, wherein each file corresponds to a different particular type of playback device and carries a respective indication."*

Additionally, Kuroda does not teach or suggest *"wherein the firmware update data is stored in the playback device and is updated upon receiving a user input permitting the update."* In Kuroda, when it is determined that the correction data table contains

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the appropriate corrected program, it installs the corrected program as soon as possible and even blocks all other processes from operation so that the installation can occur quickly and without interruption. By contrast, amended claim 11 clearly states that the update occurs upon receiving a user input permitting the update and at a later point in time than when the update was received. Clearly, Kuroda does not teach or suggest this feature of amended claim 11.

Meyerson also fails to teach or suggest "wherein the firmware update data is updated at a point in time later than when the playback device receives the firmware update data."

Meyerson teaches updating computer software through updates downloaded from the Internet. The download is done preferably periodically and automatically. A criticality check program is downloaded in the updated information which is used to determine the criticality of the update based on stored user preferences and the computer configuration. The critical updates are installed immediately. For those updates that are not critical, the user is notified of the update. The notification can have a click button allowing the user to manually authorize the automatic installation (see Meyerson, col. 7, lines 4 – 10).

The Examiner contends that Meyerson teaches that "installation of non-critical firmware/software updates to be delayed until some further convenient time in order to minimize system interruptions." Applicants respectfully disagree. Meyerson merely states that if the update is not critical, the user is notified of the update and asked to then authorize its installation. If it is authorized, then the update happens automatically and not at a later time. This differs from the above-referenced feature in amended claim 11.

As such, Meyerson does not teach or suggest "wherein the firmware update data is updated at a point in time later than when the playback device receives the firmware update data."

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No motivation to combine Kuroda and Meyerson

One skilled in the art would not be motivated to look to Kuroda and Meyerson to produce the claimed invention since these references do not teach or suggest all of the features of amended claim 11, alone or in combination.

In fact, Meyerson teaches away from the claimed invention since Meyerson provides the updates through a network such as the Internet. The specification of the claimed invention in paragraph [0003] specifically states that the claimed invention teaches away from updating via an Internet connection as follows:

Devices that are already out in the field, i.e. at a consumer's site, cannot be updated easily. With many of today's devices that have a connection to the Internet, it is possible to update the firmware while the devices are already in the field. But a mass storage playback device, such as a standalone DVD player, usually has no Internet connection and, hence, has no easy possibility to be upgraded online without intervention of the owner of such a device. (emphasis added).

One skilled in the art would not be motivated to look to Meyerson when it explicitly teaches away from the claimed invention.

In addition, as noted above, both Kuroda and Meyerson have an immediate need to replace or correct the program as quickly as possible and not to wait to perform the corrections at a later point in time. By contrast, amended claim 11 requires a user's input to permit the update, which consumes additional time, and performs the update at a later point in time than when the correction is received. As such, one skilled in the art would not look to Kuroda and Meyerson, which both teach performing corrections immediately, to solve the problem of performing the corrections at a later point in time.

Accordingly, Applicants submit that for at least the reasons discussed above the suggested combination of prior art references fails to disclose or suggest each and every feature recited in independent claim 11 and the claims that depend there from,

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and as such, are patentably distinguishable over any combination of the admitted prior art, Kuroda, and Meyerson.

Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted "prior art," Kuroda, and Meyerson.

Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted "prior art," Kuroda, and Meyerson. Claim 14 is a dependent claim from claim 11. Applicants respectfully traverse this rejection for the same reasons noted above with respect to amended claim 11. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 16 – 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted "prior art," Kuroda, Meyerson, and U.S. Patent Application 2001/0044933 (hereinafter "Tagiri").

Claims 16 – 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted "prior art," Kuroda, and Meyerson, for the same reasons that were set forth above with respect to claim 11, and further in view of Tagiri. Applicants respectfully traverse this rejection for the same reasons noted above with respect to amended claim 11.

Furthermore, the Examiner contends that Tagiri "*explicitly evidences that it was known to have stored such firmware update data in a file format (e.g., note paragraphs 018-022).*" Applicant respectfully disagrees.

Tagiri uses a single special file for version-up data. Amended claim 16 uses several different files or portions. There is a distinct advantage of using several files rather than a single file. For example, the use of several files has the advantage that any single file can be removed or exchanged before they are recorded on a medium rather than having to replace the entire single file. In addition, a user can more easily control in a file browser, the existence and version of the firmware update data on the medium with multiple files than with a single file. Tagiri does not recite, teach or suggest the use of multiple files and as such, Tagiri does not read on the amended independent claims 11 and 16 and their associated dependent claims.

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The Examiner takes Official Notice *"that it was notoriously well known in the art for such files to be organized in a 'tree structure' to simplify the process of locating that portion of the information that is needed/required."* Applicants respectfully traverse the Examiner's Official Notice because, at least, it is not in compliance with the Office's own procedures. Proper use of Official Notice requires compliance with several obligations expressly set forth in the MPEP. Specifically, the Examiner attempts to take Official Notice of a matter that is not "capable of instant and unquestionable demonstration," as expressly required by MPEP § 2144.03(A). A 'tree structure' does not simplify the process of locating the portion of information. If the tree structure has 1,000 branches on 1,000 layers, it would take an enormous amount of time to search the tree to locate the portion of the information that is needed. It would not be a simple process to locate a portion of information using such a tree structure. It would be easier to use a table, such as the table in Kuroda, and search with a hash function or the like, to obtain the required entry in the table. For this reason, a tree structure is not capable of instant and unquestionable demonstration as the Examiner contends and as such, the Examiner's Official Notice is clearly erroneous.

For at least the foregoing reasons, amended claim 16 and its corresponding dependent claims are patentably distinguishable over Applicant's admitted prior art, Kuroda, Meyerson, and Tagiri, alone or in combination. Accordingly, withdrawal of the rejection is respectfully requested.


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Conclusion

Having fully addressed the Examiner's rejections it is believed that, in view of the preceding amendments and remarks, this application stands in condition for allowance. Accordingly then, reconsideration and allowance are respectfully solicited.

It is believed that there are no additional fees due with regard to the filing of this response. However if there is an additional fee due, please charge the fee, or credit any overpayment, to Deposit Account No. 07-0832.

Respectfully submitted,
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